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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALISHA RACHELLE LASTRA,

Defendant and Appellant.

D048171

(Super. Ct. No. SCD195184)

APPEAL from a judgment of the Superior Court of San Diego County, Janet I. Kintner, Judge. Affirmed.

Alisha Rachelle Lastra was convicted of transporting methamphetamine and of possession of methamphetamine for sale. She admitted two prior felony convictions within the meaning of Penal Code section 667.5, subdivision (b). Lastra was sentenced to a prison term of eight years. She appeals, arguing the trial court erred in denying her a continuance in order to retain private counsel.

FACTS

On the evening of November 22, 2005, officers had appellant's home under surveillance. When appellant rode up on a motorcycle, the officers detained her and eventually placed her under arrest. A search of her person revealed \$1,462 in cash and a bag containing 84.04 grams of methamphetamine. Additional methamphetamine and items associated with its sale were found in appellant's apartment.

DISCUSSION

Appellant argues the trial court erred when it refused her request for a continuance in order to substitute in retained counsel.

1. *Background*

On December 12, 2005, as the matter was being assigned out for a preliminary hearing, appellant's appointed attorney, Deputy Public Defender Tara Jones, stated appellant was asking for a continuance to retain private counsel, William Mueller. When the court was told Mueller had not yet been retained, it denied the continuance and said appellant could make the request at a later time.

On January 31, 2006, after the matter was assigned to a trial court, appellant immediately requested a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118). At the hearing appellant expressed dissatisfaction with her attorney and sought a substitution of counsel. Appellant stated she wanted to retain attorney William Mueller who apparently had represented her in the past. Mueller, however, was not present. Appellant explained she had trouble raising the money for his retainer. She stated that persons,

apparently her family, now had possession of her Cadillac and would sell it to raise the money to hire Mueller. Appellant stated she wanted to retain Mueller and have the case continued. The trial court denied the *Marsden* motion and told appellant her request for a continuance would have to be heard with the prosecutor present.

In open court appellant repeated her request for a continuance to allow time to retain Mueller. Appellant explained Mueller had agreed to take her car as a retainer. The trial court denied the continuance, stating that if appellant wanted to retain counsel she should have done so before the first day of trial. The court stated appellant was seeking a continuance merely for the purpose of delay.

After the denial of the continuance and request for substitution of counsel, a man in the courtroom attempted in a disruptive manner to address the court and was ordered from the room. The court moved on to other matters. At the end of the hearing the trial court discussed the earlier disruption. Appellant stated the man "just got up the money for my attorney and everything to be able to do that. He was like not even saying -- asking the bailiff can we tell them that we want to get the retained attorney."

The trial court stated appellant apparently had been talking to Mueller but it was now the date set for trial and both appellant and Mueller knew he had to be present and ready to proceed.

2. *Law*

Although a defendant has a constitutional right to retain an attorney of his or her choice, the right is not absolute and must be carefully balanced with "other values of

substantial importance," such as the speedy determination of criminal charges. (*People v. Crovedi* (1966) 65 Cal.2d 199, 206-207.)

The defendant's right to counsel of choice must be considered when the defendant requests a continuance to substitute counsel, and the "courts are required to 'make all reasonable efforts to ensure that a defendant financially able to retain an attorney of his own choosing can be represented by that attorney.'" (*People v. Courts* (1985) 37 Cal.3d 784, 790.) However, a continuance may be denied where "the accused is 'unjustifiably dilatory' in obtaining counsel." (*Id.* at pp. 790-791.) Reviewing courts have also upheld decisions by trial courts to deny requests for continuances where "participation by a particular private attorney was still quite speculative at the time the motion for continuance was made." (*Id.* at p. 791, fn. 3.) Likewise, the denial of a continuance may be appropriate if based "on the accused's representation that he would *eventually* be able to hire counsel of his own choosing." (*Ibid.*) The denial of a continuance will be affirmed on appeal absent a showing of an abuse of discretion. (*Id.* at p. 789.)

"There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." (*People v. Crovedi, supra*, 65 Cal.2d at p. 207.)

Where a continuance is requested on the day of trial, the lateness of the request may be a significant factor justifying denial absent compelling circumstances to the contrary. (*People v. Jeffers* (1987) 188 Cal.App.3d 840, 850.)

3. *Analysis*

The trial court properly denied appellant's request for a continuance to allow a substitution of counsel. Whatever the reason, on the day set for trial appellant had not yet retained a new lawyer. While she protested she now had the money to pay Mueller, he was neither in the courtroom to confirm nor had he communicated with the trial court his agreement to represent appellant. The trial court could properly conclude that, on the morning of trial, Mueller's participation in the case was still so uncertain it was unreasonable to grant appellant's request for a continuance. There was no abuse of discretion in so deciding.

The judgment is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.